

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3978 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

C M PATEL

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioners

MR SR DIVETIA for Respondents No. 1, 2

MR SHALIN MEHTA for Respondents No. 3, 4, 5, 6

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/97

ORAL JUDGEMENT

1. The matter was called out for hearing in the first sitting and then in second sitting after lunch, but none put appearance for the petitioners. Heard the learned counsel for the respondents and perused the special civil application.

2. The petitioners prayed for declaration that the

action of the authorities in preparing combined seniority list of the persons belonging to Panchayat Services and State Services in absence of valid options exercised by the persons of Panchayat Services or in anticipation of their exercising of such option is illegal, bad in law, void-ab-initio, unconstitutional, discriminatory and violative of Articles 14 and 16 of the Constitution of India. Further prayer has been made to declare that a person belonging to Panchayat Services who has either opted for the State Services beyond the specified period or not at all opted for the State Services is not entitled to be included in the seniority list of the Research Assistants maintained by the State Services. Some other consequential prayers have also been made.

3. The counsel for the respondent-State stated that the respondents No.4, 5 and 6 have already been promoted to the post of Development Service Class-II earlier to the grant of interim relief by this Court. It has further been stated that the interim relief granted by this Court has been vacated on 8th September, 1988 and copy of the said order has been filed on the record of Sp. C.A. No.7443/88. The respondents' counsel has brought on record the notification of the Government dated 27th September, 1990 under which the conditions of exercise of option by the employees working in the Panchayats have been laid down. However that notification may not be of great help to the respondent as it has not been given any retrospective effect.

4. The private respondents have come up with a case that they have exercised the option though not within a period of four months as prescribed under the rules at the relevant time, but they exercised their option immediately when they came to know about those rules. So it is not the case where the respondents have not exercised their option but for ignorance of the rules they could not exercise their option within stipulated time.

5. There is yet another aspect of the matter which needs consideration. It is too difficult to expect from a new incumbent to search for the rules relating to his service conditions. He will not search out all these rules. In such matters, where option has to be exercised, it should be the duty of the officer incharge of the district to let him know about his right, which precisely has not been done in the present case.

6. In the result, this special civil application fails and the same is dismissed. Rule discharged.

zgs/-